REMARKS

Claims 3-12 have been previously examined and are pending in this application, of which claim 3 is independent. No claim amendments are made in this Response. Claims 3-12 stand rejected under 35 U.S.C §102(e) as purportedly being anticipated by U.S. Patent No. 6,697,824 (Bowman-Amuah) and claims 3-12 stand rejected as obvious over Bowman-Amuah in view of U.S. Patent No. 6,285,989 (Shoham). Applicants respectfully traverse these rejections and swear behind Bowman-Amuah.

1. Bowman-Amuah is Not Prior Art

A. Applicants Conceived Prior to Bowman-Amuah

Applicants have submitted two declarations of Frederick Herz under 37 C.F.R. §1.131. The Office Action asserts that the latest Declaration is insufficient to establish a conception of the invention prior to the effective date of Bowman-Amuah, and diligence.

In response, Applicants submit herewith a renewed Declaration[1] of Frederick Herz, under 37 C.F.R. §1.131, along with appropriate exhibits: a draft document which became U.S. Provisional Patent Application No. 60/161,640, to which this application claims priority (Exhibit A); a copy of a fax received by one of the inventors, Fred Hertz, at a hotel on April 14, 1999 (Exhibit B) with an earlier draft of the application; a claim chart evidencing conception in Exhibit A of the invention of claim 3 prior to August 31, 1999 (Exhibit C); and a copy of the first page of the draft document of Exhibit A bearing the Woodcock et al. date stamp of September 23, 1999 (Exhibit D). The new Declaration, draft document and claim chart together clearly establish a conception of the subject matter recited in claim 3 prior to the August 31, 1999 effective filing date of Bowman-Amuah. These exhibits are also provided on a CD-ROM enclosed herewith, as the date on the first page of Exhibit D does not copy well.

There is now clear corroboration of Applicant's testimony. The Examiner no longer need rely solely on an inventor's assertion.

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[1] An unsigned declaration accompanies this response. The signed declaration will follow

B. Applicants were Diligent

Applicants were diligent in reducing their invention to practice. As explained in Brown v. Barbacid, "The purpose of requiring reasonable diligence by the first to conceive the invention but second to reduce to practice is to assure that the invention was not abandoned or unreasonably delaed by the first inventor during the period after the second inventor entered the field. The question of reasonable diligence is one of fact." Brown v. Barbacid, 436 F.3d 1376, 1379 (Fed. Cir. 2006). "Unlike the legal rigor of conception and reduction to practice, diligence and its corroboration may be shown by a variety of activities, as precedent illustrates." Id. at 1380. Thus, there is no simple standard for determining diligence, and it must be determined on a case-by-case basis.

The record now clearly shows that Applicants need establish their diligence only from August 30, 1999 until October 27, 1999, less than two months, and that they have done so. As Mr. Herz has declared, from August 30 through September 22, 1999, Applicants worked nearly daily on their application. As Exhibit D demonstrates, they provided a copy of their draft application to their patent attorney on September 23, 1999. Only four weeks later, they filed their patent application. Such patent application is well over 350 pages in length. A comparison of the Exhibit A draft with the filed application will show the document was indeed edited. Clearly, for a busy patent attorney to study and revise a more than 350 page document and for the inventors to review it and make any necessary final revisions requires time. Four weeks is not unreasonable and case law does not require attorney time records, or a declaration of former counsel to establish such an interval represents diligence. There is sufficient evidence of reasonable diligence by Applicants from August 30 – October 27, 1999. No more is required.

In view of the foregoing, Applicants respectfully submit that Bowman-Amuah is not prior art under 35 U.S.C §102(e), to the subject matter recited in claim 3. Accordingly, Applicants respectfully request that the rejections of claim 3 and dependent claims 4-12 be withdrawn.

2. **Claims 3-12 Patentably Distinguish Over Bowman-Amuah and Shoham**

If for any reason the Examiner finds the Rule 131 declaration insufficient to remove Bowman-Amuah as a reference, the rejections nevertheless should be withdrawn as Bowman-Amuah does not, in fact, anticipate the claimed invention. Furthermore, the combination of Bowman-Amuah and Shoham does not render the claimed invention obvious.

Shoham describes a method for designing an interactive online trading market (Col. 4, lines 37-41).

Bowman-Amuah is directed to software for interacting with a user over a network in an e-Commerce environment. (Col. 1, Lines 17-19).

In contrast, claim 3 recites:

> A method of allowing access to data over a distributed data processing system, comprising:
>
> providing an automated infrastructure for the exchange of information between multiple parties;
>
> providing a trusted server with at least one data warehouse for the storage of said information;
>
> **associating a price rule with particular data records of said information which establishes a cost of accessing said particular data records, and which controls the access to that data;**
>
> **wherein said price rule enables a data owner associated with said data to specify a different price for different types and amounts of information access;**
>
> within said trusted server, providing a data processing platform which is accessible to multiple third-party data processing software programs which operate as software agents;
>
> wherein a plurality of seller-side software agents have defined relationships to said price rules and associated data records, and control access to said data records;
>
> wherein a plurality of buyer-side software agents have regulated query access to said data processing platform and may request pricing information from said seller-side software agents;
>
> wherein said plurality of seller-side software agents and said plurality of buyer-side software agents operate as persistent data processing systems which interact with one another repeatedly over time and which thus define a virtual marketplace. (Emphasis added.)

Claim 3 patentably distinguishes over Bowman-Amuah because Bowman-Amuah fails to disclose or suggest all of the limitations recited in claim 3. For example, Bowman-Amuah fails to disclose or suggest "associating a price rule with particular data records of said information which establishes a cost of accessing said particular data records, and which controls the access to that data," as recited in claim 3. Bowman-Amuah discloses two different types of *products*, physical products and electronic products that may include content and information. (Col. 26, lines 18-26). Further, Bowman-Amuah discloses dynamically determining the price for purchase of a product, discounts to the price, shipping charges and taxes and tariffs relating to the purchase of the product. (Col. 61, line 29 – col. 62, line 4). However, determining the price for purchasing a product is not the same thing as "associating a price rule with...data records" to establish a cost of accessing the data records and control access to that data. The claim requires that the price rule "enables a data owner associated with said data to specify a different price for different types and amounts of information access." A "price rule" could be set to establish different prices for *accessing* a data record, such as a cost for one-time access, a different cost for monthly access, etc., by contract. Bowman-Amuah only provides for setting a price for *purchasing* a product.

Bowman-Amuah does not disclose or teach employing different prices for different types and amounts of access; after all, once a purchaser *buys* a product, the purchaser owns at and has full-time use and enjoyment of the product. Buying a house is not the same thing as renting an apartment, even though both put a roof over one's head.

To anticipate a claim invention, a reference must disclose every limitation of the claim. Bowman-Amuah does not!

In view of the foregoing, claim 3 is not anticipated by Bowman-Amuah. Accordingly, Applicants respectfully request that the rejection of claim 3 under §102(e) be withdrawn. Claims 4-12 each depend from claim 3 and are patentable for at least the same reasons. Accordingly, Applicants respectfully request that the rejections of these claims under §102(e) be withdrawn.

The Office Action also rejected claim 1 under §103(a) as being unpatentable over Bowman-Amuah in view of Shoham. Applicants assume that the Office Action meant to reject claim 3 under §103(a), rather than claim 1, and respectfully traverse this rejection.

The Office Action has failed to establish a *prima facie* case of obviousness because the Office Action has not pointed to any teaching or motivation as to why one of ordinary skill in the art would modify Bowman-Amuah by the teachings of Shoham. Rather, the Office Action has pointed to a portion of Shoham (Col. 6, lines 13-17) that describes the operation of Shoham's trading market. This description of the Shoham trading market does not describe that the Bowman-Amuah system should be modified or, if so, how the Bowman-Amuah system should be modified, but merely describes the auction functions that the Shoham system is capable of implementing. Therefore, one of ordinary skill in the art would not be motivated to modify Bowman-Amuah. For these reasons, the combination of Bowman-Amuah and Shoham is improper, and withdrawal of this rejection is respectfully requested.

In view of the foregoing, Applicants believes the pending application is in condition for allowance. A Notice of Allowance is respectfully requested. The Examiner is requested to call the undersigned at the telephone number listed below if this communication does not place the case in condition for allowance.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicant hereby requests any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 23/2825.

Respectfully submitted,

Dated: October 16, 2006

By _____

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